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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JERRY CONLEY and GEORGETTA  
CONLEY,

Plaintiffs,

v.

WELLS FARGO, et al.,

Defendants.

2:11-CV-1415 JCM (LRL)

**ORDER**

Presently before the court is defendant's Wells Fargo Bank, National Association's (named as Wells Fargo Bank and Wells Fargo Mortgage in the complaint) motion to dismiss and for release of lis pendens. (Doc. #10). Plaintiffs Jerry and Georgetta Conley failed to file a timely response to the motion. Their response was due November 17, 2011. Six days after the deadline passed, on November 23, 2011, defendant Wells Fargo filed a notice of non-opposition with the court. Finally, on November 28, 2011, plaintiffs filed their response.<sup>1</sup> (Doc. #16).

Pursuant to Local Rule 7-2(b), an opposing party's failure to file a timely response to any motion constitutes the party's consent to the granting of the motion and is proper grounds for dismissal. *U.S. v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979). However, prior to dismissal, the

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<sup>1</sup> The court notes that the plaintiffs' response fails to address any of the arguments made in support of the motion to dismiss. Rather, it merely states "This case should not be dismissed and Wells Fargo and[/]or Wells Fargo Home Mortgage should be held accountable for their actions and[/]or errors." Pl.'s Opp1:25-26. The response goes on to list the causes of action pled in the complaint, stating in conclusory terms that plaintiffs are entitled to relief.

1 district court is required to weigh several factors: “(1) the public's interest in expeditious resolution  
2 of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4)  
3 the public policy favoring disposition of cases of their merits; and (5) the availability of less drastic  
4 sanctions.” *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (citing *Henderson v. Duncan*, 779 F.2d  
5 1421, 1423 (9th Cir. 1986)).

6 In the present case, not only did plaintiffs fail to timely file a response to the pending motion,  
7 but also failed to file their complaint or serve the defendants with the complaint.

8 Nonetheless, Wells Fargo Bank has appeared in the action and moved to dismiss the instant  
9 complaint. In light of plaintiffs’ failure to file and serve the complaint, their failure to timely  
10 respond to the motion to dismiss, their failure to address any of Wells Fargo’s arguments, and taking  
11 into account the factors identified in *Ghazali*, the court finds dismissal of Wells Fargo Bank  
12 appropriate.

13 Plaintiffs are cautioned that if they wish to proceed with this litigation, they must comply  
14 with the Federal Rules of Civil Procedure and properly serve the remaining defendants. Failure to  
15 do so could result in dismissal of the action pursuant to Rule 4(m).

16 In light of the forgoing,

17 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the clerk of the court file  
18 plaintiffs’ complaint.

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendants’ motion to  
20 dismiss (doc. #21) be, and the same hereby is, GRANTED. The complaint is dismissed as to Wells  
21 Fargo, without prejudice.

22 DATED December 6, 2011.

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24   
25 **UNITED STATES DISTRICT JUDGE**